

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 667 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VALABHAI PITAMBER'S HEIRS

Versus

GULAM MEHMMED MUSABHAI

Appearance:

1. Civil Revision Application No. 667 of 2001
MR MN MEHTA for the Petitioners Nos. 1-1/4
PARTY-IN-PERSON for the Respondent
-

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/10/2002

ORAL JUDGEMENT

This Revision Application has been preferred by the heirs and legal representatives of the deceased defendant - tenant, under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') against the judgment and order dated 3rd April, 2001 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.64/1995.

The respondent herein is the owner of the property known as 'Musabhai Ni Chawl' situated at Ahmedabad. The defendant was the tenant of one of the huts bearing Municipal Census No.27/11 and City Survey No.142/11 constructed in the said property (hereinafter referred to as 'the suit premises'). The monthly rent of the suit premises was Rs.5=75.

The respondent - landlord instituted H.R.P. Suit No.2515/1990 in the Court of Small Causes, Ahmedabad against the defendant. According to the plaintiff, the defendant was in arrears of rent since 1st March, 1978. The defendant had constructed a shed in the common passage near the suit premises and had thus caused nuisance and annoyance to the landlord and the other residents of the said property; that the defendant had made permanent construction and alterations in the suit premises without the consent of the plaintiff. The plaintiff had raised demand for the rent due by giving notice on 6th March, 1988. The said notice was duly received by the defendant. Nevertheless, the defendant did not act according to the notice. The plaintiff, therefore, prayed for recovery of the possession of the suit premises and a sum of Rs.207=00 being the amount of rent due for the last three years and the cost of the notice.

The suit was contested by the defendant by filing written statement (Ex.9). The defendant denied that he was tenant in arrears. He raised the dispute as to the standard rent. The defendant further stated that the plaintiff had failed to pay the municipal taxes for the property 'Musabhai Ni Chawl'. The said property 'Musabhai Ni Chawl' was, therefore, put to auction sale by the Municipal Corporation and was purchased by the Municipal Corporation in the year 1976. Since then, the Municipal Corporation was recovering the rent from the defendant and the defendant had been paying such rent regularly to the Municipal Corporation. The defendant

also denied that he had caused nuisance and annoyance and alteration in the suit premises as alleged. Pending the suit, the plaintiff made application under Section 11(4) of the Rent Act. Under the order made on the said application, the defendant was directed to deposit the rent due. The trial Court framed the issues (Ex.41). The learned trial Judge was pleased to hold, inter alia, that the defendant was tenant in arrears and that he was not ready and willing to pay the rent. With regard to the alleged nuisance and annoyance caused by the defendant and the permanent construction and alterations made by the defendant, the learned trial Judge held in favour of the defendant. The learned trial Judge also fixed the standard rent at Rs.5=75. Though the learned trial Judge was of the opinion that the defendant was tenant in arrears and was not ready and willing to pay the rent, the Court was of the opinion that since the defendant had raised the dispute as to the standard rent he was entitled to protection under Section 12(3)(b) of the Rent Act. The learned Judge was, under the judgment and order dated 17th January, 1995, pleased to pass decree for a sum of Rs.194=50 and to direct the defendant to deposit such amount on or before 28th February, 1995. The defendant having deposited the said amount by order dated 16th March, 1995, the learned trial Judge dismissed the suit.

Feeling aggrieved, the plaintiff preferred Civil Appeal No.64/1995 before the Appellate Bench, Small Causes Court, Ahmedabad. The Appellate Bench was, under the impugned judgment and order dated 3rd April, 2001, pleased to hold that the dispute as to the standard rent raised by the defendant was not bonafide. The defendant, therefore, can not claim protection under Section 12(3)(b) of the Rent Act and the case should be governed by Section 12(3)(a) of the Rent Act. The Appellate Bench allowed the appeal and passed the decree for possession. Feeling aggrieved, the defendant has preferred the present Revision Application.

The learned advocate Mr.M.N.Mehta appearing for the petitioner has remained absent.

The respondent has appeared in person and has supported the judgment of the Appellate Bench. He has submitted that the plaintiff had produced receipts for the municipal taxes paid by the plaintiff in relation to the suit premises upto 6th March, 1976. He has emphathetically submitted that he is the owner of the property and also the suit premises. The defendant admittedly being the tenant in arrears, the case should

be governed by Section 12(3)(a) of the Rent Act. The decree for possession, therefore, requires to be confirmed.

It is indisputable that the rent was payable by the month. It is also evident that the defendant had not raised the dispute as to the standard rent within one month from the date of the receipt of the suit notice. The dispute as to the standard rent has been raised for the first time in the written statement (Ex.9) filed on 8th February, 1991 i.e. long after the expiry of period of one month from the date of the receipt of the suit notice.

The question is whether the defendant was really a tenant in arrears and whether he neglected to pay the arrears within one month from the date of demand raised by the plaintiff. It was the categorical defence of the defendant that the property 'Musabhai Ni Chawl' was purchased by the Municipal Corporation in the year 1976. Since then, the Municipal Corporation had called upon the defendant to pay the rent to the Municipal Corporation and accordingly the defendant had been paying the rent to the Municipal Corporation. In support thereof, he also produced the rent receipts issued by the Municipal Corporation. In respect of this specific defence raised by the defendant, the learned trial Judge has not even framed the relevant issue i.e. no issue has been framed whether the property 'Musabhai Ni Chawl' including the suit premises was purchased by the Municipal Corporation as alleged, and whether the defendant had been paying the rent to the Municipal Corporation as asserted by him. The learned Judge though has not framed the issue, has brushed away the contention by saying that the sale certificate produced by the defendant has not been exhibited and that the plaintiff had produced receipts of the municipal taxes paid for the suit premises upto 6th March, 1976. I am, therefore, of the view that the learned trial Judge has committed a manifest error in not framing the proper issue arising from the pleadings and in not considering the relevant materials on record. This infirmity has not been noticed by the Appellate Bench also. Thus, both the Courts below have committed a manifest error in not exercising the jurisdiction vested in it, which has, in my opinion, resulted into miscarriage of justice.

In the result, the Revision Application is allowed. The impugned judgment and order dated 3rd April, 2001 passed in Civil Appeal No.64/1995 by the Appellate Bench, Small Causes Court, Ahmedabad and the

judgment and order dated 17th January, 1995/16th March, 1995 passed by the learned trial Judge in H.R.P. Suit No.2515/1990 are quashed and set aside. The H.R.P. Suit No.2515/1990 is remanded to the learned trial Judge. The learned trial Judge shall frame issue in respect of the alleged purchased of the suit premises by the Municipal Corporation and shall examine whether the defendant had paid the rent of the Municipal Corporation as asserted by him. Both the parties to the suit shall be at liberty to lead evidence in respect of such issue. Pending the suit the defendant shall deposit the monthly rent in the Court every month regularly. The plaintiff shall not withdraw such amount of rent until the suit is heard and finally disposed of. Rule is made absolute to the above extent. The parties shall bear their own costs.

(Ms. R.M. Doshit, J.)

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